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In The

Supreme Court of the United States

October Term, 1977

No. 77-922

CHRYSLER CORPORATION,

Petitioner,

vs.

HAROLD BROWN, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF *AMICI CURIAE* FOR SCIENTISTS & ENGINEERS FOR SECURE ENERGY, THE COMMITTEE ON ACADEMIC NONDISCRIMINATION AND INTEGRITY, AND MID-ATLANTIC LEGAL FOUNDATION

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INTERESTS OF THE *AMICI CURIAE*

Pursuant to this Court's Rule 42, Scientists and Engineers for Secure Energy ("Scientists and Engineers"), the Committee on Academic Nondiscrimination and Integrity ("Committee"), and Mid-Atlantic Legal Foundation ("Mid-Atlantic") hereby move the Court for leave to file the attached brief as an *amici curiae*. Consent was secured from counsel for both parties. Copies of these letters have been filed with the Clerk.

These three organizations have an interest in the disposition of the case which is now before this Court pursuant to the writ of certiorari to the judgment and opinion of the United States Court of Appeals for the Third Circuit in *Chrysler Corporation v. Brown et al.*, 565 F. 2d 1132 (3rd Cir. 1977) based upon the expertise and purposes of their membership. The brief urges the Court to reverse the judgment of the court below.

Scientists and Engineers for Secure Energy is a national group of scholars and professional researchers who organized in 1976 to monitor and influence events occurring in energy and technology related fields. It has devoted its resources to decreasing the proliferation of administrative and litigative obstacles to effective development and implementation of science and technology for the benefit of our society. Scientists and Engineers has presented comments to the Nuclear Regulatory Commission and committees of Congress; petitioned the Third Circuit; and appeared as an *amicus* before this Court.

It has a membership of approximately 300 which includes the following especially well-recognized scientists: Hans A. Bethe,* Felix Bloch,* Robert Hofstadter,* W.F. Libby,* Robert S. Mulliken,* James Rainwater,* Frederick Seitz, Edward Teller, James A. Van Allen, and Eugene Wigner.*

The professional activities of the members of Scientists and Engineers engage them in the scholarly research leading to the development of proposals, operating hypotheses and the establishment of designs and prototypes. In addition, they are called upon to supervise the construction of scientific and other machines based upon theoretical as well as practical elements and procedures. Several of its members hold patents which have considerable commercial value including those relating to nuclear reactors.

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* Nobel Laureates

Research endeavors have traditionally been partially supported by industries and government agencies interested in the advancement of particular branches of science and technology. Government-university cooperation has a long respected tradition; one need only remember the famous Michelson-Morley experiments in 1887 which formed the basis of Einstein's relativity theories and were funded by the United States Navy. This interaction has accelerated since World War II.

A new element has recently entered the government-university partnership. For reasons frequently unrelated to the purposes of funding itself, the federal government has used its contractual powers to demand various and extended amounts of information from scientific laboratories and the universities in which the membership of Scientists and Engineers teach and work. In the past, this information was assumed to be confidential since a premature disclosure could harm the individual researcher, his laboratory, and the school with which the former was associated. The advent of the Freedom of Information Act stimulated individuals and groups to request disclosure of such information and the appearance of contradictory rulings by various courts about the meanings and protections afforded by this statute has impelled Scientists and Engineers to feel that they have an interest in the current proceedings before the Court and to believe that there is a considerable urgency for clarification of the present, alternative interpretations to accord with the position presented herein.

The Committee on Academic Nondiscrimination and Integrity ("Committee") is a national group organized in 1972 by faculty members of American colleges and universities, public and private. The development of administrative practices relating to university admission and employment standards which these persons felt were in opposition to federal and state legislation relating to civil rights, current educational practices, and the equal protection provisions of the United States

Constitution stimulated its organization. The Committee has emerged from the University Center for Rational Alternatives, an organization of concerned scholars and teachers, which since its inception in 1968 has worked to re-establish tranquillity on American campuses and to strengthen rational discourse as the most respected and effective means of education. During its existence, the Committee on Academic Nondiscrimination and Integrity has united a representative cross-section of faculty members from colleges and universities across the country. Its steering committee members include Bruno Bettelheim, Paula Sutter Fichtner, Nathan Glazer, Oscar Handlin, Sidney Hook, Eric Isaac, Eugene Rostow, Paul Seabury, Miro Todorovich and L. Pearce Williams.

Through its extended membership, the Committee has gathered additional information concerning the spread of government regulations affecting institutions of higher learning which impair the effectiveness and the integrity of the educational process. These materials were subsequently used to analyze trends and formulate positions which the Committee has advanced in presentations to various government departments and agencies. Representatives have also testified at congressional hearings, agency hearings as well as at local university administration meetings and before the United States Commission on Civil Rights.

The Committee is concerned by the continuing erosion of constitutionally guaranteed rights and has filed briefs as *amicus* in a number of significant cases including *Cramer v. Virginia Commonwealth University, DeLeo v. Regents of the University of Colorado,* and *Regents of the University of California v. Bakke.* In each instance, the position of the Committee has supported the rights of individuals.

Recently, the Committee has observed various departments and commissions of the federal government substantially increase their requests for data concerning personnel practices at

the universities and laboratories where they are employed. Letters of recommendation or evaluations contained within the personnel files of faculty members are among the documents which are sought.

In the past, this information was viewed as confidential and exempt from later disclosure by the recipient agency. Recently issues have been raised concerning the efficiency of confidentiality protections embodied in existent statutes. Specifically, as the Solicitor General of the United States asks in his response to the petition for a writ of certiorari, "whether federal agencies may elect by regulation to disclose information that is exempt from mandatory disclosure under the Freedom of Information Act . . .?" This issue is essential to the Committee. Its members are disturbed by the weakening of the protections afforded by the exemptions from disclosure sections of the Freedom of Information Act. It is their hope that the Court will elect to strengthen the protection of individuals in accord with the position taken in this brief.

Mid-Atlantic Legal Foundation was organized in 1976 as a Pennsylvania not-for-profit corporation to engage in nonpartisan legal research, study and analysis, for the benefit of the general public of the effects of the evolving concepts of law on our democratic institutions and to provide legal representation and to assist other organizations in providing legal representation on matters of public interest at all levels of the judicial process.

Mid-Atlantic Legal Foundation takes special interest in questions of law of a national scope that have a direct effect on the mid-Atlantic region: namely, Pennsylvania, New York, New Jersey, Maryland, Delaware and West Virginia. Because of the large number of educational and research institutions functioning within its geographic area, the issues presented herein are of special interest to the community represented by the foundation.

As explained, these groups have an interest in this case because the decision of the Third Circuit has interpreted the Freedom of Information Act, as amended, in a manner which will have far-reaching effects on their daily activities. It is anticipated that an adverse effect on the nature and amount of information voluntarily submitted to the federal government by persons who formally cooperated fully with all requirements will be manifested immediately. In turn, deleterious effects upon the general public based upon the utilization of incomplete information on which the government will predicate its regulatory functions is anticipated. The modification by judicial decisions of the confidential and personal information exemptions of the Freedom of Information Act, as amended, coupled with the growth of controlling, individualized departmental regulations has permitted the courts to erode the confidence formerly assured to the academic and scientific communities by it. Technical and scientific groups may elect to evade reluctantly the requirements of reporting by presenting only those portions of their research which are already general public information.

Scientists and Engineers, the Committee, and Mid-Atlantic Legal Foundation have carefully reviewed the petition for a writ of certiorari and the related briefs of the petitioner, Chrysler Corporation, and the respondent, Brown, and respectfully submit that the brief lodged herein presents an analysis of problems related to the issues before the Court which were not presented by the parties on consideration of the petition for a writ of certiorari. It is, therefore, believed that these considerations will not otherwise be presented to the Court although they are significant to the disposition of this case.

SUMMARY OF THE ARGUMENT

The Court of Appeals for the Third Circuit has held that the Freedom of Information Act exemptions to disclosure are permissive rather than mandatory and information may be disclosed if appropriate agency regulations so permit.

The *amici* argue that such disclosure should be barred if the information was originally submitted in confidence. While in this status, potential competitive harm resulting from premature disclosure cannot be accurately evaluated. Thus, a dependable right to contest disclosure should be retained in accord with the expressions of congressional intent found in the legislative history of the FOIA. These statements demonstrated an awareness of the distinctive nature of the work product generated by the members of the organizations comprising the *amici curiae* and accorded it appropriate protection within the FOIA's mandate of general openness.

Decisions governing the release of information in the instant matter were made by the personnel of the agency with whom the submitter had filed it. Such persons lack an interest in preserving its confidential nature. Their status, federal employees, exposes them to severe sanctions for failure to make appropriate disclosures to requesters who utilize the Freedom of Information Act. This results in a predisposition to evade confrontations by opting to comply with FOIA requests with expedition which favors the requester rather than the submitter.

Current confusion among the decisions of several courts on this issue makes it difficult for a submitter to determine the most efficient and appropriate action to take for the protection of his interest. Realistically, the sole effective action is to secure immediate injunctive relief and, thereafter, to receive an opportunity to argue substantively before an appropriate forum. Current reality does not meet this expectation as the appropriate forum may be limited to informal discussions with the same

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BRIEF *AMICUS CURIAE* ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

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